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# INDETERMINATE SENTENCE, RELEASE ON PAROLE AND PARDON

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(REPORT OF THE COMMITTEE OF THE INSTITUTE.<sup>1</sup>)

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The only new state to adopt the indeterminate sentence the past year is North Carolina. In that state, by act of March 7, 1917, entitled, "An act to regulate the treatment, handling and work of prisoners," it is provided that all persons convicted of crime in any of the courts of the state whose sentence shall be for five years or more shall be sent to the State Prison and the Board of Directors of the State Prison "is herewith authorized and directed to establish such rules and regulations as may be necessary for developing a system for paroling prisoners." The provisions for indeterminate sentences are as follows: "The various judges of the Superior Court of North Carolina are herewith authorized and directed, in their discretion, in sentencing prisoners to the State Prison to pass upon such prisoners a minimum and maximum sentence, thus making the sentence of said prisoner an indeterminate sentence and the board of directors of the State Prison is herewith authorized and directed to consider at least once every six months the cases of such prisoners as have been committed to the State Prison with an indeterminate sentence as to whether such prisoner is entitled to a discharge, shall take into consideration the said prisoner's record since committed to the charge of the Board of Directors of the State Prison: Provided, that said prisoner has served the minimum time to which he was sentenced after allowing credit for good behavior as authorized by law." It will be noticed that it is discretionary with the court whether to impose an indeterminate sentence or not. On the same day the legislature passed "An act to establish an advisory board of parole." This board is to consist of the Attorney-General, the chairman of the Board of Directors of the State Prison and the chairman of the Board of State Charities and the duties of the board are to act in an advisory capacity to the Governor with respect to the parole or conditional pardon of prisoners in the State Prison. In

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<sup>1</sup>Presented at the annual meeting of the Institute at Saratoga, N. Y., September 3, 1917.

<sup>2</sup>The membership of this committee is as follows:

Edward Lindsey, Warren, Pa., Chairman; Frank Randall, Boston; Edwin M. Abbott, Philadelphia.

pursuance of its general duty the Act provides that the board shall meet once each month in the office of the Attorney-General and carefully consider the record and all other facts and circumstances which may be produced to ascertain whether or not any prisoner should be recommended to the Governor as a proper person to be paroled on a conditional pardon. It is the duty of the superintendent of the State Prison after any prisoner has been confined in the State Prison as long as the minimum punishment prescribed by statute for the offense of which such prisoner was convicted provided such minimum punishment is not less than one-fourth the term for which such prisoner was sentenced by the court to lay the case of such prisoner before the next monthly meeting of the parole board. The board may, however, in its discretion take up the case of any prisoner prior to that time, but there is no provision for any application or petition to the board by or on behalf of the prisoner. The basis of recommendation by the parole board is left rather vague by the act, but if the board recommend the granting of parole to any prisoner, the Governor, if he approve of the recommendation "may grant a conditional pardon under his constitutional power to grant reprieves, commutations and pardons and according to the practice and procedure heretofore observed and followed in the granting of conditional pardons by the executive." The parole is for the balance of the term of sentence. The conditions of the parole are not clearly defined, but it is provided that the paroled prisoner shall report once a month to the clerk of the Superior Court of the county in which he resides "and show to the satisfaction of such clerk that by his industry and good conduct he has satisfied the condition of his parole." It is provided that if the Governor shall order the reimprisonment of any person discharged on parole, he may issue his warrant to the sheriff of any county to arrest such person and return him to the State Prison. Under what circumstances the Governor may do this is not specified in the act; it is left wholly to the Governor's discretion.

Illinois by act of June 25, 1917, has entirely revised her statute law relating to indeterminate sentence and parole. Under this revision, it is provided that persons convicted of treason, murder, rape or kidnapping, who are sentenced to imprisonment, shall be sentenced to a definite term. They are however subject to parole. It is further provided that except in the case of the crimes enumerated above, "every sentence to the penitentiary or reformatory and every sentence or commitment to any other state institution, now or hereafter, provided by law for the incarceration, punishment, discipline, training or reformation of persons convicted and sentenced to or committed to

such institution (not including however county jail) shall be a general sentence of imprisonment and the courts of this State imposing such sentence or commitment shall not fix the limit or duration of such imprisonment. The term of such imprisonment or commitment shall be for not less than the minimum, nor greater than the maximum term provided by law for the offense of which the person stands convicted or committed. It shall be deemed and taken as a part of every such sentence, as fully as though written therein, that the term of such imprisonment or commitment may be terminated earlier than the maximum by the Department of Public Welfare by and with the approval of the Governor in the nature of a release or commutation of sentence or commitment." It is further provided that the Department of Public Welfare shall establish rules and regulations for the parole of all such prisoners. The conditions of the parole are not stated except that no person can be released on parole until arrangements have been made for honorable and useful employment for such person and also for a proper and suitable home. It is the duty of the Department of Public Welfare to keep in communication with paroled prisoners and when any such person has served not less than six months on parole "acceptably" and in the opinion of the Department "has given such evidence as is deemed reliable and trustworthy that he or she will remain at liberty without violating the law and that his or her final release is not incompatible with the welfare of society" the said Department "shall have the power to cause to be entered of record in its department an order discharging such prisoner or ward for or on account of his or her conviction or commitment, which said order, when approved by the Governor shall operate as a complete discharge of such prisoner or ward in the nature of a release or commutation of his or her sentence."

Several states have amended their statutes relating to the indeterminate sentence and release on parole in certain particulars.

California.

On May 18, 1917, the legislature of California passed the following act on the subject of indeterminate sentence:

1168. a. Every person convicted of a public offense, for which public offense punishment by imprisonment in any reformatory or the state prison is now prescribed by law, if such convicted person shall not be placed on probation, a new trial granted, or imposing of sentence suspended, shall be sentenced to be confined in the state prison, but the court in imposing such sentence shall not fix the term or duration of the period of imprisonment.

b. It is hereby made the duty of the warden of the state prison

to receive such person, who shall be confined until duly released as provided for in this act; provided, that the period of such confinement shall not exceed the maximum or be less than the minimum term of imprisonment provided by law for the public offense of which such person was convicted.

c. It shall be the duty of the judge before whom such convicted person was tried, and of the district attorney conducting the prosecution, to obtain and with the commitment furnish to the state board of prison directors in writing, all information that can be given in regard to the career, habits, degree of education, age, nativity, parentage, and previous occupation, of such convicted person, together with a statement to the best of their knowledge as to whether such person was industrious or not, of good character or not, the nature of his associates and his disposition.

d. The governing authority of the reformatory or prison in which such person may be confined, or any board or commission that may be hereafter given authority so to do, shall determine after the expiration of the minimum term of imprisonment has expired, what length of time, if any, such person shall be confined, unless the sentence be sooner terminated by commutation or pardon by the governor of the state; and if it be determined that such person so sentenced be released before the expiration of the maximum period for which he is sentenced, then such person shall be released at such time as the governing board, commission or other authority may determine.

e. The state board of prison directors shall make all necessary rules and regulations to carry out the provisions of this act not inconsistent therewith, and may provide the forms of all documents necessary therefor.

f. Any convicted person undergoing sentence in either of the state prisons of this State, not sooner released under the provisions of this act shall, in accordance with the provisions of existing law, be discharged from custody on serving the maximum punishment provided by law for the offense of which such person was convicted.

The rules and regulations have not yet been announced by the Board of Prison Directors.

#### Kansas.

Kansas in 1917 provided for the establishment of a State Industrial Farm for Women to which shall be sentenced "every female person above the age of 18 years, who shall be convicted of any offense against the criminal laws of this State punishable by imprisonment." Such sentence shall be indeterminate but the imprisonment shall not exceed the maximum provided by law for the crime for which the per-

son was convicted. The persons so sent to the Industrial Farm may be paroled by the State Board of Corrections and shall be released absolutely "when it appears to the said Board of Corrections that there is a strong and reasonable probability that" such person "will live and remain at liberty without violating the law or that her release is not incompatible with the welfare of society."

Maine.

In 1917 a Board of Prison Commissioners was created which takes over the functions of the Advisory Board in the matter of paroles and the Board of Prison and Jail Inspectors.

Michigan.

Michigan amends her indeterminate sentence act by providing that: "Authority to grant parole under the provisions of this act is hereby conferred exclusively upon the governor in all cases of murder, actual forcible rape, for offenses by public officers in violation of their duties as such officers, and to all persons convicted and serving sentence for conspiracy to defraud public municipalities or the bribing or attempt to bribe of public officers. In all other cases such authority is hereby conferred upon the Advisory Board in the matter of pardons. The Governor and the Advisory Board in the matter of pardons acting jointly shall have authority to adopt such rules as may by them be deemed wise or necessary to properly carry out the provisions of this act and to amend such rules at pleasure: provided prisoners under the provisions of this act shall be eligible to parole only after the expiration of their minimum term of imprisonment."

It is also provided that the convict so paroled, while at large by virtue of such parole, shall be deemed to be still serving the sentence imposed upon him and shall be entitled to good time the same as if confined in prison.

Minnesota.

In Minnesota the legislature in 1917 has amended the indeterminate sentence act of that State by providing that the same shall not apply to persons convicted of treason or murder of the first or second degree and by providing that the court in passing sentence may fix the maximum term of imprisonment.

Montana.

Montana provides that both the minimum and maximum time of imprisonment shall be named in the sentence by the court; the minimum shall not be longer than one-half the maximum nor shall it be less than, nor shall the maximum be greater than the minimum and maximum respectively provided by law for the crime of which the person was convicted. Also any person so sentenced may in the dis-

cretion of the Governor and the State Board of Prison Commissioners be paroled at any time after he shall have served one-half of the minimum time specified in the sentence.

#### New York.

New York provides that the indeterminate sentence law shall apply to persons sentenced to life imprisonment except under a conviction for murder.

#### Oregon.

The Oregon acts have been amended so as to provide that the sentence of any person to imprisonment for a felony, except treason and murder, shall state both the minimum penitentiary penalty, which shall be fixed by the court and shall not exceed one-half of the maximum term of imprisonment established by law, and also the maximum penitentiary penalty for such crime which shall not exceed the maximum term of imprisonment provided by law therefor.

### APPENDIX.

#### Questions.

1. Who may be committed under the indeterminate sentence?
2. Provisions for maximum and minimum term.
3. Parole Board.
4. Duties of Parole Board.
5. Regulation of petition or argument.
6. Prisoners eligible to parole.
7. Points considered in granting parole.
8. Conditions of parole.
9. What constitutes violation of parole?
10. System of arrest for violation of parole and fees attached thereto.
11. Penalty for violation of parole.
12. Conditions for final discharge of prisoners from parole.
13. How paroled prisoner is finally discharged.
14. Number of violations of parole.
15. Extent of parole system.
16. Number of prisoners now under parole.
17. Note. Miscellaneous remarks. Special provisions.

#### Answers.

##### North Carolina (Act of March 7, 1917.)

1. All persons convicted of crime whose sentence shall be for five years or more.
2. That in sentencing prisoners to the state prison the court shall pass upon such prisoner a minimum and maximum sentence.
3. Consists of the Attorney-General, the chairman of the Board of

Directors of the State Prison and the chairman of the Board of State Charities.

4. To act in an advisory capacity to the Governor with respect to the parole or conditional pardon of prisoners in the State Prison.
5. Cases are brought before the Board by the superintendent of the State Prison.
6. Any prisoner who has been confined as long as the minimum punishment prescribed by statute for the offense of which he was convicted, provided same is not less than one-fourth the term for which he was sentenced, whose conduct has been good.
7. Demeanor and conduct as shown by obedience to rules and regulations and any facts with respect to his past life and conduct.
8. To report monthly to the clerk of the Superior Court of the county in which he resides and show to the satisfaction of such clerk that by his industry and good conduct he has satisfied the condition of his parole.
9. Failure to report or bad conduct.
10. By order of the Governor directed to the sheriff of any county, expense to be paid by State Treasurer.
11. Time out on parole not to be deducted from original sentence.
12. Running of term of sentence.
13. If a prisoner is paroled the Governor grants a conditional pardon and the running of the term of sentence fully completes the condition.

Illinois (Acts of June 25, 1917).

1. Every person sentenced or committed to any state institution provided by law for the incarceration, punishment, discipline, training or reformation of persons (except county jails) except persons convicted of murder, treason, rape or kidnapping.
2. The maximum and minimum term provided by law for the offense of which the person was convicted.
3. The Department of Public Welfare has jurisdiction over paroles.
4. To keep a record of such facts as can be ascertained about prisoners, of their physical examination, and of their conduct and to establish rules and regulations for the granting of paroles. Also to keep in communication with prisoners on parole.
5. The Department of Public Welfare is authorized to establish



rules and regulations governing paroles but such have not yet been announced.

6. All persons committed to state institutions as under (1), whether for definite or indeterminate terms, after completion of minimum term.
7. The act makes no specification except that employment must have been secured for the prisoner.
8. The act does not specify.
9. The act does not specify.
10. The paroled prisoner may be arrested on the order of the warden, superintendent or managing head of the institution directed to any particular person. No fee is provided for.
11. The act does not specify.
12. That prisoner has served not less than six months on parole "acceptably" and has "given evidence that he will remain at liberty without violating the law and that his release is not incompatible with the welfare of society."
13. By order of the Department of Public Welfare, approved by the Governor.